

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1033

Citations Affected: IC 6-1.1-45.5; IC 6-1.5-5-1; IC 6-3.1-23; IC 13-11-2; IC 13-25-4-8; IC 34-13-3-3.

Synopsis: The environment. Establishes a procedure for an owner of a brownfield to petition the department of local government finance to waive or reduce the outstanding charges against the brownfield listed on the tax duplicate. Requires a county or municipal fiscal body to review the petition and either deny the petition or make a recommendation to the department. Extends the voluntary remediation tax credit by two years. Increases the maximum credit amount and changes the method of computation of the amount. Increases the total amount of credits allowed statewide to \$2,000,000. Provides that, for purposes of the law concerning underground storage tanks and petroleum releases: (1) a person is considered an owner or operator; and (2) a governmental entity is not an owner or an operator; of an underground storage tank or a petroleum facility if the person conveyed ownership or control of the tank or facility to the governmental entity because of circumstances in which the governmental entity involuntarily acquired ownership or control. Provides that a governmental entity is not liable for costs or damages associated with the presence of a hazardous substance on a property in which the political subdivision acquired an interest because of circumstances in which the governmental entity involuntarily acquired an interest in the property unless the governmental entity causes or contributes to the release or threatened release of the hazardous substance. Provides that a governmental entity is not liable if a loss results from an act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield. Expands the application of the waste tire fee to tires mounted on farm tractors, implements of husbandry, and semitrailers. Requires the environmental quality service council to study during the 2005 interim issues concerning energy matters, including investigating methods to increase research, development, production, and use of alternative fuels. **(This conference committee report adds the provisions concerning brownfields, the voluntary remediation tax credit, underground storage tanks and petroleum releases, governmental liability associated with the presence of a hazardous substance, and expansion of the application of the waste tire fee.)**

Effective: Upon passage; January 1, 2005 (retroactive); July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1033 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-1.1-45.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]:
- 5 **Chapter 45.5. Brownfield Tax Reduction or Waiver**
- 6 **Sec. 1. As used in this chapter:**
- 7 (1) "board" refers to the county property tax assessment board
- 8 of appeals;
- 9 (2) "brownfield" has the meaning set forth in IC 13-11-2-19.3;
- 10 (3) "contaminant" has the meaning set forth in IC 13-11-2-42;
- 11 (4) "delinquent tax liability" means:
- 12 (A) delinquent property taxes;
- 13 (B) delinquent special assessments;
- 14 (C) interest;
- 15 (D) penalties; and
- 16 (E) costs;
- 17 assessed against a brownfield and entered on the tax duplicate
- 18 that a person seeks to have waived or reduced by filing a
- 19 petition under section 2 of this chapter;
- 20 (5) "department" refers to the department of local government
- 21 finance, unless the specific reference is to the department of
- 22 environmental management; and
- 23 (6) "fiscal body" refers to the fiscal body of:

- (A) the city if the brownfield is located in a city;
- (B) the town if the brownfield is located in a town; or
- (C) the county if the brownfield is not located in a city or town.

Sec. 2. A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The petition must:

- (1) be on a form:
 - (A) prescribed by the state board of accounts; and
 - (B) approved by the department;
- (2) state:
 - (A) the amount of the delinquent tax liability; and
 - (B) when the delinquent tax liability arose;
- (3) describe:
 - (A) the manner in which; and
 - (B) when;
- the petitioner acquired or proposes to acquire the brownfield;
- (4) describe the conditions existing on the brownfield that have prevented the sale or the transfer of title to the county;
- (5) describe the plan of the petitioner for:
 - (A) addressing any contaminants on the brownfield; and
 - (B) the intended use of the brownfield;
- (6) include the date by which the plan referred to in subdivision (5) will be completed;
- (7) include a statement from the department of environmental management that the property is a brownfield;
- (8) state whether the petitioner:
 - (A) has had an ownership interest in an entity that contributed; or
 - (B) has contributed;
- to the contaminant or contaminants on the brownfield;
- (9) state whether any part of the delinquent tax liability can reasonably be collected from a person other than the petitioner;
- (10) state that the petitioner seeks:
 - (A) a waiver of the delinquent tax liability; or
 - (B) a reduction of the delinquent tax liability in a specified amount; and
- (11) be accompanied by a fee in an amount established by the county auditor for:
 - (A) completing a title search; and
 - (B) processing the petition.

Sec. 3. On receipt of a petition under section 2 of this chapter, the county auditor shall determine whether the petition is complete. If the petition is not complete, the county auditor shall return the petition to the petitioner and describe the defects in the petition. The petitioner may correct the defects and file the completed petition with the county auditor. On receipt of a complete petition, the county auditor shall forward a copy of the complete petition to:

- (1) the assessor of the township in which the brownfield is located;

- (2) the owner, if different from the petitioner;
- (3) all persons that have, as of the date of the filing of the petition, a substantial property interest of public record in the brownfield;
- (4) the board;
- (5) the fiscal body;
- (6) the department of environmental management; and
- (7) the department.

Sec. 4. On receipt of a complete petition as provided under sections 2 and 3 of this chapter, the board shall at its earliest opportunity conduct a public hearing on the petition. The board shall give notice of the date, time, and place fixed for the hearing:

(1) by mail to:

- (A) the petitioner;
- (B) the owner, if different from the petitioner;
- (C) all persons that have, as of the date the petition was filed, a substantial interest of public record in the brownfield; and
- (D) the assessor of the township in which the brownfield is located; and

(2) under IC 5-3-1.

Sec. 5. (a) Subject to section 8(g) of this chapter, the board may recommend that the department grant the petition or that the department approve a reduction of the delinquent tax liability in an amount less than the amount sought by the petitioner if the board determines that:

(1) the brownfield was acquired or is proposed to be acquired as a result of:

- (A) sale or abandonment in a bankruptcy proceeding;
- (B) foreclosure or a sheriff's sale;
- (C) receivership; or
- (D) purchase from a political subdivision;

(2) the plan referred to in section 2(5) of this chapter is in the best interest of the community;

(3) the waiver or reduction of the delinquent tax liability:

- (A) is in the public interest; and
- (B) will facilitate development or use of the brownfield;

(4) the petitioner:

- (A) has not had an ownership interest in an entity that contributed; and
- (B) has not contributed;

to the contaminant or contaminants on the brownfield;

(5) the department of environmental management has determined that the property is a brownfield;

(6) if the petitioner is the owner of the brownfield, the delinquent tax liability sought to be waived or reduced arose before the petitioner's acquisition of the brownfield; and

(7) no part of the delinquent tax liability can reasonably be collected from a person other than the owner of the brownfield.

(b) After the hearing and completion of any additional investigation of the brownfield or of the petitioner that the board considers necessary, the board shall:

(1) give notice, by mail, to the parties listed in section 4(1) of this chapter of the board's recommendation that:

(A) the fiscal body deny the petition; or

(B) the department:

(i) deny the petition;

(ii) waive the delinquent tax liability, subject to section 8(g) of this chapter; or

(iii) reduce the delinquent tax liability by a specified amount, subject to section 8(g) of this chapter; and

(2) forward to the department and the fiscal body a copy of:

(A) the board's recommendation; and

(B) the documents submitted to or collected by the board at the public hearing or during the course of the board's investigation of the brownfield or of the petitioner.

Sec. 6. (a) The fiscal body shall at a regularly scheduled meeting:

(1) review the petition and all other materials submitted by the board under section 5 of this chapter; and

(2) determine whether to:

(A) deny the petition;

(B) recommend that the department waive the delinquent tax liability, subject to section 8(g) of this chapter; or

(C) recommend that the department reduce the delinquent tax liability by a specified amount, subject to section 8(g) of this chapter.

The fiscal body may recommend a reduction of the delinquent tax liability in an amount that differs from the amount of reduction recommended by the board.

(b) The fiscal body shall:

(1) publish notice under IC 5-3-1 of its consideration of the petition under this section; and

(2) forward to the department written notice of its action under this section.

Sec. 7. (a) On receipt by the department of a recommendation by the fiscal body to waive or reduce the delinquent tax liability, the department shall:

(1) review:

(A) the petition and all other materials submitted by the board; and

(B) the notice received from the fiscal body; and

(2) subject to subsection (b), determine whether to:

(A) deny the petition;

(B) waive the delinquent tax liability, subject to section 8(g) of this chapter; or

(C) reduce the delinquent tax liability by a specified amount, subject to section 8(g) of this chapter.

The department may reduce the delinquent tax liability in an amount that differs from the amount of reduction recommended by the board or the fiscal body.

(b) The department's determination to waive or reduce the delinquent tax liability under subsection (a) is subject to the limitation in section 8(f)(2) of this chapter.

1 **Sec. 8. (a) The department shall give notice of its determination**
 2 **under section 7 of this chapter and the right to seek an appeal of**
 3 **the determination by mail to:**

- 4 (1) the petitioner;
- 5 (2) the owner, if different from the petitioner;
- 6 (3) all persons that have, as of the date the petition was filed
- 7 under section 2 of this chapter, a substantial property interest
- 8 of public record in the brownfield;
- 9 (4) the assessor of the township in which the brownfield is
- 10 located;
- 11 (5) the board;
- 12 (6) the fiscal body; and
- 13 (7) the county auditor.

14 **(b) A person aggrieved by a determination of the department**
 15 **under section 7 of this chapter may obtain an additional review by**
 16 **the department and a public hearing by filing a petition for review**
 17 **with the county auditor of the county in which the brownfield is**
 18 **located not more than thirty (30) days after the department gives**
 19 **notice of the determination under subsection (a). The county**
 20 **auditor shall transmit the petition to the department not more than**
 21 **ten (10) days after the petition is filed.**

22 **(c) On receipt by the department of a petition for review, the**
 23 **department shall set a date, time, and place for a hearing. At least**
 24 **ten (10) days before the date fixed for the hearing, the department**
 25 **shall give notice by mail of the date, time, and place fixed for the**
 26 **hearing to:**

- 27 (1) the person that filed the appeal;
- 28 (2) the petitioner;
- 29 (3) the owner, if different from the petitioner;
- 30 (4) all persons that have, as of the date the petition is filed, a
- 31 substantial interest of public record in the brownfield;
- 32 (5) the assessor of the township in which the brownfield is
- 33 located;
- 34 (6) the board;
- 35 (7) the fiscal body; and
- 36 (8) the county auditor.

37 **(d) After the hearing, the department shall give the parties listed**
 38 **in subsection (c) notice by mail of the final determination of the**
 39 **department. The department's final determination under this**
 40 **subsection is subject to the limitations in subsections (f)(2) and (g).**

41 **(e) The petitioner under section 2 of this chapter shall provide to**
 42 **the county auditor reasonable proof of ownership of the**
 43 **brownfield:**

- 44 (1) if a petition is not filed under subsection (b), at least thirty
- 45 (30) days but not more than one hundred twenty (120) days
- 46 after notice is given under subsection (a); or
- 47 (2) after notice is given under subsection (d) but not more than
- 48 ninety (90) days after notice is given under subsection (d).

49 **(f) The county auditor:**

- 50 (1) shall, subject to subsection (g), reduce or remove the
- 51 delinquent tax liability on the tax duplicate in the amount

1 stated in:

2 (A) if a petition is not filed under subsection (b), the
3 determination of the department under section 7 of this
4 chapter; or

5 (B) the final determination of the department under this
6 section;

7 not more than thirty (30) days after receipt of the proof of
8 ownership required in subsection (e); and

9 (2) may not reduce or remove any delinquent tax liability on
10 the tax duplicate if the petitioner under section 2 of this
11 chapter fails to provide proof of ownership as required in
12 subsection (e).

13 (g) A reduction or removal of delinquent tax liability under
14 subsection (f) applies until the county auditor makes a
15 determination under this subsection. After the date referred to in
16 section 2(6) of this chapter, the county auditor shall determine if
17 the petitioner successfully completed the plan described in section
18 2(5) of this chapter by that date. If the county auditor determines
19 that the petitioner completed the plan by that date, the reduction
20 or removal of delinquent tax liability under subsection (f) becomes
21 permanent. If the county auditor determines that the petitioner did
22 not complete the plan by that date, the county auditor shall restore
23 to the tax duplicate the delinquent taxes reduced or removed under
24 subsection (f), along with interest in the amount that would have
25 applied if the delinquent taxes had not been reduced or removed.

26 Sec. 9. As provided in IC 6-1.5-5-1, a petitioner under section 2
27 of this chapter may initiate an appeal of the department's final
28 determination under section 8 of this chapter by filing a petition
29 with the county assessor not more than forty-five (45) days after the
30 department gives the petitioner notice of the final determination.

31 SECTION 2. IC 6-1.5-5-1 IS AMENDED TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The Indiana board shall
33 conduct impartial review of all appeals of final determinations of the
34 department of local government finance made under the following:

35 (1) IC 6-1.1-8.

36 (2) IC 6-1.1-14-11.

37 (3) IC 6-1.1-16.

38 (4) IC 6-1.1-26-2.

39 **(5) IC 6-1.1-45-6.**

40 (b) Each notice of final determination issued by the department of
41 local government finance under a statute listed in subsection (a) must
42 give the taxpayer notice of:

43 (1) the opportunity for review under this section; and

44 (2) the procedures the taxpayer must follow in order to obtain
45 review under this section.

46 (c) Except as provided in subsection (e), in order to obtain a review
47 by the Indiana board under this section, the taxpayer must file a petition
48 for review with the appropriate county assessor not later than forty-five
49 (45) days after the notice of the department of local government
50 finance's action is given to the taxpayer.

51 (d) The county assessor shall transmit a petition for review under

subsection (c) to the Indiana board not later than ten (10) days after the petition is filed.

(e) In order to obtain a review by the Indiana board of an appeal of a final determination of the department of local government finance under IC 6-1.1-8-30, the public utility company must follow the procedures in IC 6-1.1-8-30.

SECTION 3. IC 6-3.1-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability ~~incurred under:~~

- (1) ~~IC 6-2.5 (the state gross retail and use tax);~~
- (2) ~~IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);~~
- (3) ~~IC 6-5.5 (the financial institutions tax); and~~
- (4) ~~IC 27-1-18-2 (the insurance premiums tax);~~

for a listed tax (as defined in IC 6-8.1-1-1), as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

SECTION 4. IC 6-3.1-23-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

- (1) The taxpayer does the following:
 - (A) Makes a qualified investment in that taxable year.
 - ~~(B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties:~~
 - ~~(C)~~ **(B) Submits a plan to the legislative body that: the following to the Indiana development finance authority:**
 - (i) ~~describes~~ **A description of** the taxpayer's proposed redevelopment of the property.
 - (ii) ~~indicates~~ The sources and amounts of money to be used for the remediation and proposed redevelopment of the property.
 - ~~and~~
 - (iii) ~~estimates~~ **An estimate of** the value of the remediation and proposed redevelopment.
 - (iv) A description documenting any good faith attempts to recover the costs of the environmental damages from liable parties.**
 - (v) Proof of appropriate zoning for the intended reuse.**
 - (vi) A letter supporting the proposed project and redevelopment from the legislative body.**
 - (vii) The documentation described in subsection (b).**
 - ~~(D) Certifies to the legislative body that the taxpayer:~~
 - (i) ~~has never had an ownership interest in an entity that contributed; and~~
 - (ii) ~~has not contributed;~~
- to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation; as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority:**

(2) The legislative body, after holding a public hearing of which notice was given under IC 5-3-1, adopts a resolution:

(A) determining that:

- (i) the estimate of the value of the remediation and proposed redevelopment included in the plan under subdivision (1)(C)(iii) is reasonable for projects of that nature; and
- (ii) the plan submitted under subdivision (1)(C) is in the best interest of the community;

(B) determining that the taxpayer:

- (i) has never had an ownership interest in an entity that contributed; and
- (ii) has not contributed;

to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation; as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority; and

(C) approving the credit:

(2) The department determines under section 15 of this chapter that the taxpayer's return claiming the credit is filed with the department before the maximum amount of credits allowed under this chapter is met.

(b) In determining whether the redevelopment is in the best interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:

- (1) the development of housing;
- (2) the development of green space;
- (3) the development of high technology businesses; or
- (4) the creation or retention of high paying jobs.

(b) The documentation referred to in subsection (a)(1)(B)(vii) consists of information reflecting that the taxpayer:

- (1) has never had an ownership interest in an entity that caused or contributed to; and
- (2) has not caused or contributed to;

the release or threatened release of a hazardous substance, a contaminant, petroleum, or a petroleum product that is the subject of the remediation.

(c) The Indiana development finance authority shall:

- (1) determine whether the taxpayer meets the requirements of subsection (a)(1); and
- (2) if the taxpayer meets the requirements of subsection (a)(1), certify to the taxpayer that the taxpayer is eligible for the credit allowed under this chapter.

SECTION 5. IC 6-3.1-23-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 6. The amount of the credit allowed under this chapter **with respect to each brownfield site** is equal to the lesser of:

- (1) ~~one two~~ hundred thousand dollars ~~(\$100,000)~~; **(\$200,000)**; or
- (2) the sum of:
 - (A) ~~ten one hundred~~ percent ~~(10%)~~ **(100%)** multiplied by the **first one hundred thousand dollars (\$100,000)** of qualified investment made by the taxpayer during the taxable year; **plus**

(B) fifty percent (50%) multiplied by the amount of the qualified investment made by the taxpayer during the taxable year that exceeds one hundred thousand dollars (\$100,000).

SECTION 6. IC 6-3.1-23-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) Upon receipt of a request under subsection (a), the department of environmental management and the Indiana development finance authority shall:

(1) examine the costs; ~~under the standards adopted by the department of environmental management~~; and

(2) certify any costs that the department and the authority determine to be a qualified investment.

(d) Upon completion of a voluntary remediation for which costs have been certified as a qualified investment under subsection (c), the taxpayer:

(1) shall notify the department of environmental management; and

(2) shall request from the department of environmental management:

(A) with respect to voluntary remediation conducted under IC 13-25-5, the certificate of completion issued by the commissioner under IC 13-25-5-16 for the voluntary remediation work plan under which the costs certified under subsection (c)(2) were incurred; or

(B) with respect to voluntary remediation not conducted under IC 13-25-5, a certification of the costs incurred for the voluntary remediation that are consistent with the costs certified under subsection (c)(2).

SECTION 7. IC 6-3.1-23-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department of state revenue.

(b) The taxpayer shall submit the following to the department of state revenue:

(1) The certification of the qualified investment by the department of environmental management and the Indiana development finance authority under section 12(c) of this chapter.

(2) Either:

(A) an official copy of the certification referred to in section 12(d)(2)(A) of this chapter; or

(B) the certification issued by the department of environmental management in response to a request under section 12(d)(2)(B) of this chapter.

(3) Proof of payment of the certified qualified investment.

(4) A copy of the legislative body's resolution adopted under section 5(a)(2) of this chapter.

(4) The certification received by the taxpayer under section 5(c) of this chapter.

(5) Information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 8. IC 6-3.1-23-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 15. (a) The amount of tax credits allowed under this chapter may not exceed ~~one~~ **two** million dollars (~~\$1,000,000~~) (**\$2,000,000**) in a state fiscal year unless the Indiana development finance authority determines under subsection (e) that money is available for additional tax credits in a particular state fiscal year. However, if the maximum amount of tax credits allowed under this subsection exceeds the amount available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5), the maximum amount of tax credits allowed under this subsection is reduced to the amount available.

(b) The department shall record the time of filing of each return claiming a credit under section 13 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in the chronological order in which the return is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, a return claiming the credit filed later in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the information required by section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits granted under this chapter for each state fiscal year to the Indiana development finance authority. The Indiana development finance authority shall transfer to the state general fund an amount equal to the total credits granted from the subaccount of the environmental remediation revolving loan fund (IC 13-19-5).

(e) At the end of each state fiscal year, the Indiana development finance authority may determine whether money is available in the ~~subaccount of the~~ environmental remediation revolving loan fund (IC 13-19-5) to provide tax credits in excess of the amount set forth in subsection (a) in the subsequent state fiscal year.

(f) Before ~~December 31~~ **June 30** of each year, the Indiana development finance authority may assess the demand for tax credits under this chapter and determine whether the need for other brownfield activities is greater than the need for tax credits. If the Indiana development finance authority determines that the need for other brownfield activities is greater than the need for tax credits, the authority may set aside up to three-fourths (3/4) of the amount of allowable tax credits for the subsequent state fiscal year and use it for

other brownfield projects.

(g) Except as provided in subsection (h), the Indiana development finance authority may use money set aside under subsection (f) for any permissible purpose.

(h) Money specifically appropriated for tax credits may not be set aside for another use.

SECTION 9. IC 6-3.1-23-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 16. A tax credit may not be allowed under this chapter for a taxable year that begins after December 31, ~~2005~~ **2007**. However, this section does not affect the ability of a taxpayer to carry forward the excess of a tax credit claimed for a taxable year that begins before January 1, ~~2006~~ **2008**, under section 11 of this chapter.

SECTION 10. IC 13-11-2-150 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in ~~subsection~~ **subsections (b) and (c)**) means:

(1) for an underground storage tank that:

(A) was:

~~(A)~~ (i) in use on November 8, 1984; or

~~(B)~~ (ii) brought into use after November 8, 1984;

for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or

~~(2) for an underground storage tank that (B) is:~~

~~(A)~~ (i) in use before November 8, 1984; but

~~(B)~~ (ii) no longer in use on November 8, 1984;

a person who owned the tank immediately before the discontinuation of the tank's use; or

(2) a person who conveyed ownership or control of the underground storage tank to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;

(D) abandonment;

(E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(F) receivership;

(G) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(H) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank.

(b) "Owner", for purposes of IC 13-23-13, does not include a person

- 1 who:
- 2 (1) does not participate in the management of an underground
- 3 storage tank;
- 4 (2) is otherwise not engaged in the:
- 5 (A) production;
- 6 (B) refining; and
- 7 (C) marketing;
- 8 of regulated substances; and
- 9 (3) holds indicia of ownership primarily to protect the owner's
- 10 security interest in the tank.
- 11 **(c) "Owner", for purposes of IC 13-23, does not include a**
- 12 **political subdivision (as defined in IC 36-1-2-13) or unit of federal**
- 13 **or state government that acquired ownership or control of an**
- 14 **underground storage tank because of:**
- 15 **(1) bankruptcy;**
- 16 **(2) foreclosure;**
- 17 **(3) tax delinquency, including an acquisition under IC 6-1.1-24**
- 18 **or IC 6-1.1-25;**
- 19 **(4) abandonment;**
- 20 **(5) the exercise of eminent domain, including any purchase of**
- 21 **property once an offer to purchase has been tendered under**
- 22 **IC 32-24-1-5;**
- 23 **(6) receivership;**
- 24 **(7) other circumstances in which the political subdivision or**
- 25 **unit of federal or state government involuntarily acquired**
- 26 **ownership or control because of the political subdivision's or**
- 27 **unit's function as sovereign;**
- 28 **(8) transfer from another political subdivision or unit of federal**
- 29 **or state government; or**
- 30 **(9) any other means to conduct remedial actions on a**
- 31 **brownfield;**
- 32 **unless the political subdivision or unit of federal or state**
- 33 **government causes or contributes to the release or threatened**
- 34 **release of a substance, in which case the political subdivision or**
- 35 **unit of federal or state government is subject to IC 13-23 in the**
- 36 **same manner and to the same extent as a nongovernmental entity**
- 37 **under IC 13-23.**
- 38 SECTION 11. IC 13-11-2-151 IS AMENDED TO READ AS
- 39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 151. (a) "Owner or
- 40 operator", for purposes of IC 13-24-1, means the following:
- 41 (1) For a petroleum facility, a person who owns or operates the
- 42 facility.
- 43 (2) For a **petroleum** facility where title or control has been
- 44 conveyed because of:
- 45 (A) bankruptcy;
- 46 (B) foreclosure;
- 47 (C) tax delinquency, **including a conveyance under IC 6-1.1-24**
- 48 **or IC 6-1.1-25;**
- 49 (D) abandonment; ~~or~~
- 50 (E) **the exercise of eminent domain, including any purchase**
- 51 **of property once an offer to purchase has been tendered**

under IC 32-24-1-5;

(F) receivership;

(G) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or
(H) ~~a similar~~ any other means to conduct remedial actions on a brownfield;

to a **political subdivision or** unit of federal or state ~~or local~~ government, a person who owned, operated, or otherwise controlled the **petroleum** facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a **political subdivision or** unit of federal ~~or state or local~~ government that acquired ownership or control ~~involuntarily of the facility~~ through:

(1) bankruptcy;

(2) foreclosure;

~~(2)~~ (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

~~(3)~~ (4) abandonment; ~~or~~

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

~~(4)~~ (7) other circumstances in which the **political subdivision or unit of federal or state** government ~~unit~~ involuntarily acquired title because of the **political subdivision's or** unit's function as sovereign;

(8) transfer from another political subdivision or unit of federal or state government; or

(9) any other means to conduct remedial actions on a brownfield.

(c) The term includes a **political subdivision or** unit of federal or state ~~or local~~ government that causes or contributes to the release or threatened release of a substance, in which case the **political subdivision or** unit of federal ~~or state or local~~ government is subject to IC 13-24-1:

(1) in the same manner; and

(2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

(1) does not participate in the management of a petroleum facility;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of petroleum; and

(3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

SECTION 12. IC 13-11-2-245 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 245. (a) "Vehicle", for

purposes of IC 13-17-5, refers to a vehicle required to be registered with the bureau of motor vehicles and required to have brakes. The term does not include the following:

- (1) Farm tractors.
- (2) Implements of husbandry.
- (3) Farm tractors used in transportation.
- (4) Mobile homes (house trailers).
- (5) Trailers weighing not more than three thousand (3,000) pounds.
- (6) Antique motor vehicles.

(b) "Vehicle", for purposes of IC 13-18-12, means a device used to transport a tank.

(c) "Vehicle", for purposes of IC 13-20-4, refers to a municipal waste collection and transportation vehicle.

(d) "Vehicle", for purposes of IC 13-20-13-7, means a motor vehicle, **a farm tractor (as defined in IC 9-13-2-56(a) or IC 9-13-2-56(b)), an implement of husbandry (as defined in IC 9-13-2-77), a semitrailer (as defined in IC 9-13-2-164(a) or IC 9-13-2-164(b)),** and types of equipment, machinery, implements, or other devices used in transportation, manufacturing, agriculture, construction, or mining. The term does not include ~~the following~~:

- ~~(1)~~ a lawn and garden tractor that is propelled by a motor of not more than twenty (20) horsepower.
- ~~(2) A semitrailer.~~

(e) "Vehicle", for purposes of IC 13-20-14, has the meaning set forth in IC 9-13-2-196.

SECTION 13. IC 13-25-4-8, AS AMENDED BY P.L.25-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Except as provided in subsection (b), (c), or (d), a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

- (1) the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan;
- (2) the costs of any health assessment or health effects study carried out by or on behalf of the commissioner under Section 104(i) of CERCLA (42 U.S.C. 9604(i)); or
- (3) damages for:
 - (A) injury to;
 - (B) destruction of; or
 - (C) loss of;

natural resources of Indiana; is liable, in the same manner and to the same extent, to the state under this section.

(b) The exceptions provided by Sections 107(b), 107(q), and 107(r) of CERCLA (42 U.S.C. 9607(b)) to liability otherwise imposed by Section 107(a) of CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise imposed under subsection (a).

(c) Notwithstanding any liability imposed by the environmental management laws, a lender, a secured or unsecured creditor, or a fiduciary is not liable under the environmental management laws, in connection with the release or threatened release of a hazardous substance from a facility unless the lender, the fiduciary, or creditor has

participated in the management of the hazardous substance at the facility.

(d) Notwithstanding any liability imposed by the environmental management laws, the liability of a fiduciary for a release or threatened release of a hazardous substance from a facility that is held by the fiduciary in its fiduciary capacity may be satisfied only from the assets held by the fiduciary in the same estate or trust as the facility that gives rise to the liability.

(e) **Except as provided in subsection (g), a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government** is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the political subdivision **or unit of federal or state government** acquired an interest in the property **because of:**

(1) ~~under IC 6-1.1-24 or IC 6-1.1-25, bankruptcy; abandonment; or other circumstances in which the political subdivision involuntarily acquired an interest in the property; or~~

(2) ~~to conduct remedial actions on a brownfield; after the hazardous substance was disposed of or placed on, in, or at the property;~~

(2) **foreclosure;**

(3) **tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;**

(4) **abandonment;**

(5) **the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;**

(6) **receivership;**

(7) **other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign;**

(8) **transfer from another political subdivision or unit of federal or state government; or**

(9) **any other means to conduct remedial actions on a brownfield.**

(f) **If a transfer of an interest in property as described in subsection (e) occurs, a person who owned, operated, or otherwise controlled the property immediately before the political subdivision or unit of federal or state government acquired the interest in the property remains liable under this section:**

(1) **in the same manner; and**

(2) **to the same extent;**

as the person was liable immediately before the person's interest in the property was acquired by the political subdivision or unit of federal or state government.

(g) **Notwithstanding subsection (e), a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:**

(1) **in the same manner; and**

**(2) to the same extent;
as a nongovernmental entity under this section.**

SECTION 14. IC 34-13-3-3, AS AMENDED BY HEA 1288-2005, SECTION 218, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
 - (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
 - (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
 - (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
 - (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:
 - (A) a set of rules governing the use of the extreme sport area;
 - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
 - (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.
- This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.
- (6) The initiation of a judicial or an administrative proceeding.
 - (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
 - (8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.
 - (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.
 - (10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.
 - (11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.
 - (12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.
 - (13) Entry upon any property where the entry is expressly or impliedly authorized by law.
 - (14) Misrepresentation if unintentional.
 - (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's

own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(23) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

1 **(B) the governmental entity was responsible for the initial**
 2 **placement of the hazardous substances, petroleum, or other**
 3 **pollutants on the brownfield.**

4 **SECTION 15. [EFFECTIVE UPON PASSAGE] (a) The**
 5 **environmental quality service council shall:**

6 **(1) investigate methods to increase research, development,**
 7 **production, and use of alternative fuels, including:**

8 **(A) biofuels such as biodiesel, ethanol, and other agricultural**
 9 **based alternatives to petroleum based fuels;**

10 **(B) clean coal technology;**

11 **(C) wind and solar power;**

12 **(D) waste tires; and**

13 **(E) other sources of renewable energy;**

14 **(2) give priority consideration to review of energy projects and**
 15 **policies that will provide maximum economic and**
 16 **environmental benefits to Indiana;**

17 **(3) include recommendations on the matters considered under**
 18 **this SECTION in the council's 2005 final report to the general**
 19 **assembly; and**

20 **(4) provide the council's 2005 final report to:**

21 **(A) the commissioner of agriculture; and**

22 **(B) the Indiana economic development corporation.**

23 **(b) This SECTION expires January 1, 2006.**

24 **SECTION 16. [EFFECTIVE UPON PASSAGE] (a) IC 6-3.1-23-4,**
 25 **IC 6-3.1-23-5, IC 6-3.1-23-6, IC 6-3.1-23-12, IC 6-3.1-23-13,**
 26 **IC 6-3.1-23-15, and IC 6-3.1-23-16, all as amended by this act,**
 27 **apply to reportable periods beginning after December 31, 2004.**

28 **(b) The department of state revenue shall implement this act to**
 29 **allow the application of the statutes referred to in subsection (a), all**
 30 **as amended by this act, to reportable periods beginning after**
 31 **December 31, 2004.**

32 **SECTION 17. An emergency is declared for this act.**

 (Reference is to EHB 1033 as printed March 22, 2005.)

Conference Committee Report
on
Engrossed House Bill 1033

Signed by:

Representative Heim
Chairperson

Senator Gard

Representative Hoy

Senator Lanane

House Conferees

Senate Conferees